

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

FCE BENEFIT ADMINISTRATORS, INC.,	§	
	§	
Plaintiff	§	
	§	
v.	§	CIVIL ACTION NO. 5:22-00464
	§	
SERVEXO and JOHN PALMER,	§	
	§	
Defendants.	§	
	§	
	§	

DEFENDANTS’ NOTICE OF REMOVAL

Defendants Servexo and John Palmer (collectively “Defendants”) hereby remove to this Court the action styled *FCE Benefit Administors [sic], Inc. v. Servexo and John Palmer*, previously filed in the 73rd Judicial District Court, Bexar County, Texas Cause No. 2022CI06534. The grounds for removal are as follows:

I. STATE COURT ACTION, PARTIES, AND PLEADINGS

1. On April 7, 2022, a civil action was commenced in Bexar County District Court entitled *FCE Benefit Administors [sic], Inc. v. Servexo and John Palmer*, Cause No. 2022CI06534. True and correct copies of the pleadings in the state action, including Plaintiff’s Petition are contained in the accompanying Appendix. App. at 1-11 (Ex. A).

2. The state action pleadings included in Defendants’ Appendix constitutes all process, pleadings, and orders served upon Defendants in the state action to date and filed in the state court action. App. at 1-11 (Ex. A).

3. In the Petition, Plaintiff asserts causes of action for breach of contract and negligent misrepresentation, alleging, among other things, that Defendants failed to pay its fees related to administration of Defendants Employee Health and Welfare Plan (the “Plan”) thus violating

various federal statutes including the Employee Retirement Income Security Act, 29 U.S.C. §§ 1001 *et seq.* (“ERISA”). App. at 3-5 (Ex. A).

4. Further, Plaintiff alludes to plan asset misappropriation in an apparent attempt to assert a co-fiduciary ERISA violation. Likewise, Plaintiff suggests employee benefit claims may not have been paid by either Defendant Servexo, United Health Care or both. Plaintiff’s allegations are within the scope of ERISA’s exclusive jurisdiction. App. at 3-4 (Ex. A).

II. TIMELINESS OF REMOVAL

5. Defendant Palmer was served with process on April 21, 2022, and Defendant Servexo was served with process on April 22, 2022. Therefore, this Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b) as it is being filed within thirty (30) days after service. App. at 8-11 (Ex. A).

III. JURISDICTION

6. Plaintiff’s claims are subject to federal removal jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1441(a) and (c), which provide for removal of any civil action founded upon a claim or right arising under the laws of the United States. The original federal law in the instant case is the Employee Retirement Income Security Act, 29 U.S.C. §§ 1001 *et seq.* (“ERISA”).

7. This Court also has concurrent jurisdiction over Plaintiff’s claims pursuant to 29 U.S.C. § 1132 (e)(1), which has consistently been upheld by federal courts within the Fifth Circuit as a basis for removal. *See Barrow v. Harris Corp.*, No. Civ. A. SA-04-CA-940-X , 2004 WL 2713276, at *1 (W.D. Tex. Nov. 30, 2004) (listing cases).

8. It is well settled that removal is appropriate “whether or not plaintiff phrases a claim concerning an employee benefit plan as a federal cause of action.” *Chertkov v. TPLC, Inc.*, 916 F. Supp. 608, 612 (N.D. Tex. 1996) (citing *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58, 65

(1987)).

9. Here, Plaintiff concedes the Plan is governed by ERISA and even goes so far as to allege Defendants are in violation of ERISA provisions for not making plan contributions to pay Plaintiff's administrative fees. Further, Plaintiff alludes to a myriad of ERISA violations in its Petition. *See supra*, ¶¶ 3-5. Indeed, the crux of Plaintiff's negligent misrepresentation claim pertains to the plan contributions. App. at 3-5 (Ex. A).

10. Thus, although Plaintiff styles its causes of action as being for breach of contract and negligent misrepresentation, it is actually asserting claims based upon alleged ERISA violations and removal is appropriate because of this Court's original jurisdiction.

IV. VENUE

11. Venue of the removed action is proper in this Court as it is the district and division embracing the place where the state action is pending in Bexar County, Texas. 28 U.S.C. § 1446(a).

V. NOTICES

12. As required by 28 U.S.C. § 1446(d), undersigned counsel certifies that written notice of the filings of this Notice of Removal will be given promptly to all parties and will be filed promptly with the clerk of the Bexar County District Court, Texas.

13. All named defendants join in this removal pursuant to the requirements of 28 U.S.C. § 1446(b)(2)(A).

VI. COUNSEL OF RECORD

14. The following is a list of all counsel of record:

Adam C. Ragan
Texas Bar No. 24079172
Fox Rothschild LLP
2501 N Harwood Street, Suite 1800
Dallas, TX 75201
PH: (214) 231-5787
EM: aragan@foxrothschild.com

Frank J. Ford
Texas Bar No. 24012642
FCE Benefit Administrators, Inc.
4615 Walzem, Suite 300
San Antonio, Texas 78218
PH: (310) 299-6141
EM: fford@fcebenefit.com

VII. PRAYER

WHEREFORE, pursuant to 28 U.S.C. §§ 1331 and 1441(a) and (c) and 29 U.S.C. § 1132 (e)(1), Defendant removes the case styled *FCE Benefit Administors [sic], Inc. v. Servexo and John Palmer*, Cause No. 2022CI06534 from the 73rd Judicial District Court, Bexar County, Texas.

FOX ROTHSCHILD, LLP

Respectfully submitted,

/s/Adam C. Ragan

Adam C. Ragan
Texas Bar No. 24079172
Fox Rothschild LLP
2501 N Harwood Street, Suite 1800
Dallas, TX 75201
PH: (214) 231-5768
EM: aragan@foxrothschild.com
Attorneys for Defendant

CERTIFICATE OF SERVICE

I certify that on May 10, 2022, I filed a copy of the foregoing Defendants' Notice of Removal by using CM/ECF, which will send a notice of filing to the following:

Frank J. Ford
Texas Bar No. 24012642
FCE Benefit Administrators, Inc.
4615 Walzem, Suite 300
San Antonio, Texas 78218
PH: (310) 299-6141
EM: fford@fcebenefit.com

/s/Adam C. Ragan
Adam C. Ragan